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IX

Calendar No. 382

100TH CONGRESS
1ST SESSION

H. R. 162

IN THE SENATE OF THE UNITED STATES

OCTOBER 20 (legislative day, OCTOBER 16), 1987

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AN ACT

To establish a system for identifying, notifying, and preventing illness and death among workers who are at increased or high risk of occupational disease, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "High Risk Occupational
5 Disease Notification and Prevention Act of 1987".

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) **FINDINGS.**—The Congress finds that—

8 (1) potentially hazardous substances, agents, and
9 processes are in wide industrial and commercial use in
10 the United States;

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1 (2) during the past two decades, considerable sci-
2 entific progress has been made in—

3 (A) the identification of hazardous sub-
4 stances, agents, and processes;

5 (B) the identification of medical problems as-
6 sociated with exposure to such substances, agents,
7 and processes; and

8 (C) the diagnosis and treatment of diseases
9 related to such exposure.

10 (3) progress also has been made in controlling the
11 exposure of individuals to such substances, agents, and
12 processes;

13 (4) despite the progress described in paragraphs
14 (2) and (3), there are significant gaps in efforts to pro-
15 mote the health and safety of individuals exposed to
16 such substances, agents, and processes;

17 (5) a significant number of workers suffer disabil-
18 ity or death or both from occupational diseases caused
19 by hazardous occupational exposures;

20 (6) diseases caused by exposures to occupational
21 health hazards constitute a substantial burden on inter-
22 state commerce and have an adverse effect on the
23 public welfare;

24 (7) workers have a basic and fundamental right to
25 know they have been and are being exposed to an oc-

1 cupational health hazard and are at risk of contracting
2 an occupational disease;

3 (8) there is a period of time between exposure and
4 the onset of disease when it often is possible to inter-
5 vene medically in the biological process of disease
6 either to prevent or, by early detection, successfully
7 treat many disease conditions;

8 (9) social and family services that reinforce health
9 promoting behavior can reduce the risk of contracting
10 an occupational disease;

11 (10) identifiable occupational populations are at
12 risk of developing diseases because of exposure to oc-
13 cupational health hazards;

14 (11) by means of established epidemiological, clini-
15 cal, and toxicological studies, it is possible to define
16 and identify very specific worker populations at risk of
17 contracting occupational diseases;

18 (12) there is no established national program for
19 identifying, notifying, counseling, and medically moni-
20 toring worker populations at risk of occupational
21 disease;

22 (13) there is a lack of adequately trained health
23 and human service professionals, as well as appropri-
24 ately staffed and equipped health facilities to recognize
25 and diagnose occupational diseases;

1 (14) there is a need for increased research to identify
2 and monitor worker populations at risk of occupational
3 disease; and

4 (15) through prevention and early detection of occupational
5 disease the staggering costs of medical
6 treatment and care in the United States can be
7 substantially reduced.

8 (b) PURPOSES.—It is the purpose of this Act—

9 (1) to establish a Federal program to notify individual
10 employees within populations at risk of occupationally
11 induced disease that they are at risk because of
12 exposure to an occupational health hazard, and to
13 counsel them appropriately;

14 (2) to authorize and direct the certification of
15 health facilities which have a primary purpose of educating,
16 training, and advising physicians and health and
17 social service professionals in local communities
18 throughout the United States to recognize, diagnose,
19 and treat occupational disease;

20 (3) to expand Federal research efforts to improve
21 means of identifying and monitoring worker populations
22 at risk of occupational disease; and

23 (4) to establish a set of protections prohibiting discrimination
24 against employees on the basis of identification and notification
25 of occupational disease risk.

1 SEC. 3. DEFINITIONS.

2 For the purposes of this Act—

3 (1) The term “employee” means—

4 (A) any individual currently employed by an
5 employer, or

6 (B) any individual formerly employed by an
7 employer as to whom any Federal agency main-
8 tains records pertaining to work history or the
9 employer maintains personnel records, medical
10 records, or exposure records.

11 (2) The term “employer” means any person en-
12 gaged in commerce or in an industry or business affect-
13 ing commerce, or any agency of Federal, State, or
14 local government.

15 (3) The term “Secretary” means Secretary of
16 Health and Human Services.

17 (4) The term “Institute” means the National
18 Institute for Occupational Safety and Health.

19 (5) The term “Board” means the Risk Assess-
20 ment Board established by section 4 of this Act.

21 (6) The term “occupational health hazard” means
22 a chemical, a physical, or a biological agent, generated
23 by or integral to the work process and found in the
24 workplace, or an industrial or commercial process
25 found in the workplace, for which there is statistically
26 significant evidence, based on clinical or epidemiologic

1 study conducted in accordance with established scientific
2 principles, that chronic health effects have occurred
3 in employees exposed to such agents and processes.
4 Such term includes chemicals that are carcinogens,
5 toxic or highly toxic agents, reproductive toxins, irri-
6 tants, corrosives, sensitizers, hepatoxins, nephrotoxins,
7 neurotoxins, agents that act on the hematopoietic
8 system, and agents that damage the lungs, skin, eyes,
9 or mucous membranes.

10 (7) The term "population at risk" means a class
11 or category of employees—

12 (A) exposed to an occupational health hazard
13 under working conditions (such as concentrations
14 of exposure, or durations of exposure, or both)
15 comparable to the clinical or epidemiologic data
16 referred to in paragraph (6); and

17 (B) identified and designated as a population
18 at risk of disease by the Board pursuant to section
19 4(b).

20 (8) The term "hazard communication standard"
21 means the standard contained in sections 1910.1200,
22 1915.99, 1917.28, 1918.90, and 1926.59 of title 29 of
23 the Code of Federal Regulations as in effect on Octo-
24 ber 1, 1987.

1 (9) The term "medical monitoring" means period-
2 ic examinations or laboratory tests to diagnose or aid
3 in the diagnosis of a disease that has been the subject
4 of a notification, or the appropriate type of health
5 counseling, or both, as determined by the Board for the
6 disease associated with the risk.

7 (10) The term "ethical manner" means conduct
8 that recognizes the confidentiality of information evol-
9 ving from the patient-physician relationship.

10 **SEC. 4. RISK ASSESSMENT BOARD.**

11 (a) **ESTABLISHMENT.**—(1) There is hereby established
12 within the Department of Health and Human Services the
13 Risk Assessment Board. The Board shall consist of 9 mem-
14 bers, which shall include the Director of the Institute (who
15 shall serve as chairman) and 8 members appointed by the
16 Secretary from a list of nominees provided by the National
17 Academy of Sciences that includes at least 3 nominees for
18 each category of individuals required by paragraph (2). In
19 making the appointments under this paragraph, the Secretary
20 may request additional lists of nominees.

21 (2) Of the 8 members appointed by the Secretary—

22 (A) 4 shall be Government employees, including a
23 board certified occupational physician, and epidemiolo-
24 gist, a toxicologist, and an occupational biostatistician;
25 and

1 (B) 4 shall be individuals who are not Govern-
2 ment employees, including a board certified occupation-
3 al physician, an epidemiologist, an occupational health
4 nurse, and an industrial hygienist.

5 (3) The members of the Board appointed by the Secre-
6 tary shall be appointed for terms of 5 years except that—

7 (A) of members first appointed, one of the mem-
8 bers appointed under paragraph (2)(A) and one of the
9 members appointed under paragraph (2)(B) shall be ap-
10 pointed, as designated at the time of their appointment,
11 for each of the following terms: 2 years, 3 years, 4
12 years, and 5 years;

13 (B) in the event a vacancy on the Board occurs
14 prior to the expiration of a term, the Secretary shall
15 ask the National Academy of Sciences to provide a list
16 of nominees from which the Secretary shall appoint a
17 member for the remainder of that term; and

18 (C) upon the expiration of their terms, members
19 may be reappointed if their names shall appear on the
20 lists provided by the National Academy of Sciences.

21 (4) The Institute shall provide full-time staff necessary
22 to carry out the functions of the Board.

23 (b) FUNCTIONS.—(1) The Board shall—

24 (A) review pertinent medical and other scientific
25 studies and reports concerning the incidence of disease

1 associated with exposure to occupational health
2 hazards;

4(b)(1)(B) → 3 (B) identify and designate from this review, and
4 from field assessments where appropriate, ~~those popu-~~
5 ~~lations at risk of disease~~ associated with exposure to
6 occupational health hazards that should be notified pur-
7 suant to this Act, ~~including the size, nature, and com-~~
8 ~~position of the population to be notified;~~

9 (C) develop an appropriate form and method of
10 notification that will be used by the Secretary, or
11 agents of the Secretary described under section 5(h), to
12 notify the designated populations at risk; and

13 (D) determine the appropriate type, if any, of
14 medical monitoring, or beneficial health counseling, or
15 both, for the disease associated with the risk which
16 shall be described in the notice pursuant to section
17 5(c).

18 (2) In carrying out its responsibilities under this section,
19 the Board shall, subject to the requirements of section 552a
20 of title 5, United States Code, and other applicable provisions
4(b)(2) → 21 of Federal law, ~~have access to information and data con-~~
22 ~~tained in the records of~~

23 (A) ~~any Federal agency~~, or State or political sub-
24 division of a State, ~~solely for the purpose of obtaining~~

1 ~~names, addresses, and work histories of employees sub-~~
2 ~~ject to notification under this section;~~

3 (B) any employer insofar as Federal access is pro-
4 vided for under the Occupational Safety and Health
5 Act of 1970 or the Federal Mine Safety and Health
6 Act of 1977 or regulations promulgated pursuant
7 thereto; and

8 (C) any employer insofar as such information is
9 maintained by such employer under a State or Federal
10 law concerning occupational safety and health matters.

11 (3) In identifying the populations at risk of disease, the
12 Board shall consider the following factors based upon the
13 best available scientific evidence:

14 (A) the extent of clinical and epidemiologic evi-
15 dence that specific substances, agents, or processes
16 may be a causal factor in the etiology of chronic ill-
17 nesses or long-latency diseases among employees ex-
18 posed to such substances, agents, or processes in spe-
19 cific working conditions (such as concentrations of ex-
20 posure, or durations or exposure, or both);

21 (B) the extent of supporting evidence from clini-
22 cal, epidemiologic, or toxicologic studies that specific
23 substances, agents, or processes may be a causal factor
24 in the etiology of chronic illnesses or long-latency dis-

1 eases among persons exposed to such substances,
2 agents, or processes;

3 (C) the employees involved in particular industrial
4 classifications and job categories who are or have been
5 exposed to such substances, agents, or processes under
6 working conditions (such as concentrations of exposure,
7 or durations or exposure, or both) that may be a causal
8 factor in the etiology of the illnesses or diseases;

9 (D) the extent of the increased risk of illness or
10 disease created by the occupational health hazard alone
11 or in combination with other factors, including (but not
12 limited to) smoking and diet;

13 (E) other medical, health, and epidemiological fac-
14 tors, including consistency of association, specificity of
15 association, strength of association, dose-response rela-
16 tionships, biological plausibility, temporal relationships,
17 statistical significance, and the health consequence of
18 notifying or failing to notify a population at risk; and

19 (F) the extent to which risk has been reduced as a
20 result of the promulgation of an applicable occupational
21 substance-specific health standard.

22 (4) If the Board, after considering the factors described
23 in paragraph (3), identifies a long-latency disease among per-
24 sons exposed to substances, agents, or processes, the Board
25 may, in designating a population at risk that should be noti-

1 fied under paragraph (1)(B), limit such notification to persons
2 whose exposure occurred within a time period that corre-
3 sponds to, but encompasses, the period of latency of such
4 disease.

5 (5) In carrying out activities under this section, the
6 Board is authorized to engage the services of experts in occu-
7 pational health hazards and diseases related to those occupa-
8 tional health hazards.

9 (c) PRIORITIES.—(1) In designating populations at risk
10 of disease for notification, the Board shall undertake, as its
11 first priority, to designate employee populations exposed to
12 occupational health hazards whose members are most likely
13 to benefit from medical monitoring, or health counseling, or
14 both. In making this designation, the Board shall consider
15 exposures for which there exists a permanent standard pro-
16 mulgated under section 6(b)(5) of the Occupational Safety
17 and Health Act of 1970 (29 U.S.C. 665(b)(5)), the extent of
18 medical monitoring and surveillance already available to em-
19 ployee populations covered by the permanent standards, and
20 the need to notify former employees as well as current
21 employees.

22 (2) For purposes of paragraph (1), the Board shall con-
23 sider individuals who have been exposed to dioxin as mem-
24 bers of employee populations most likely to benefit from med-
25 ical monitoring, or health counseling, or both.

1 (d) PROCEDURES.—(1) For each population designated
2 for notification, the Board shall issue a notice of proposed
3 findings and recommendations.

4 (2) The notice shall—

5 (A) be published in the Federal Register;

6 (B) set forth which classes or categories of em-
7 ployees are being considered for inclusion in a popula-
8 tion at risk and the reasons for such inclusion;

9 (C) provide for the public to submit written views
10 on the proposed findings and recommendations within
11 60 days of the notice; and

12 (D) provide for a hearing within 30 days after the
13 conclusion of such 60-day period, at which the public
14 may express views on the Board's proposed findings
15 and recommendations.

16 (3) After its deliberations and the taking of public views,
17 the Board shall issue its final findings and determinations
18 within 60 days following the hearing. If the Board deter-
19 mines that a class or category of employees is a population at
20 risk, based on the record developed pursuant to paragraph (2)
21 of this subsection, the Board shall, within 10 days of making
22 such a finding and determination, transmit that finding and
23 determination to the Secretary. Such finding and determina-
24 tion shall require that the individuals within such a popula-
25 tion at risk be notified under section 5 of this Act.

1 (4) Any aggrieved person may bring a civil action for
2 mandamus in the appropriate United States district court if
3 the final agency action is not completed within 160 days.

4 (e) DESIGNATION OF HEALTH AND EMERGENCY CARE
5 WORKERS REQUIRED.—Notwithstanding any other provi-
6 sion of this section, the ~~Board shall designate as a population~~
7 ~~at risk those health care workers and emergency care work-~~
8 ~~ers who are at risk of occupational exposure to the disease~~
9 ~~known as acquired immune deficiency syndrome or the virus~~
10 ~~known as HTLV-III or LAV virus.~~ The Board shall develop
11 the form and method of notification and determine the appro-
12 priate type of medical monitoring or health counseling with
13 respect to such population in accordance with subparagraphs
14 (C) and (D) of subsection (b)(1). The designation of such pop-
15 ulation at risk shall be subject to notice, comment, and
16 review in accordance with subsection (d).

17 SEC. 5. EMPLOYEE NOTIFICATION AND COUNSELING.

18 (a) ACTIONS BY THE SECRETARY.—Upon presentation
19 of final findings and determinations by the Board that a given
20 class or category of employee is a population at risk of dis-
21 ease to be notified pursuant to this Act, the Secretary shall
22 adopt those findings and determinations, without further
23 notice and without public comment, unless the Secretary con-
24 cludes that—

1 (1) procedural requirements set forth in section
2 4(d) are not met, or

3 (2) to do so will endanger the health and safety of
4 a class or category of employees.

5 (b) NOTIFICATION OF POPULATION AT RISK.—(1)

6 Upon adopting the findings and determinations of the Board
7 that a given class or category of employee is a population at
8 risk of disease, the Secretary shall make every reasonable
9 effort to notify each individual within such population, and
10 their respective employers, of that risk. The Secretary,

11 through the Institute, shall be responsible for conducting the
12 necessary notification, except as provided in subsection (g).

13 (2) In addition, the Secretary may make simultaneous
14 use of public service announcements and other means of noti-
15 fication appropriate to reach the population at risk.

16 (3) In the case of employees for whom any exposure to
17 the occupational health hazard occurred in the course of cur-
18 rent employment, notification shall be transmitted by the
19 Secretary to individual employees and to employers and be
20 posted prominently by the employer in places at the worksite
21 that are easily accessible to and frequented by the employees
22 in the population at risk.

23 (4) The Secretary shall establish procedures for notify-
24 ing persons who have been subjects of epidemiological studies
25 demonstrating findings of increased risk of occupational dis-

1 ease conducted by an agency within the Department of
2 Health and Human Services and shall require such notifica-
3 tion procedures be included in all future epidemiological stud-
4 ies by such agency.

5 (c) EXEMPTION.—(1) Within 30 days after the Board
6 issues a final determination that a given class or category of
7 employee is a population at risk of disease to be notified pur-
8 suant to this Act, an employer who employs or has employed
9 employees within that population may apply to the Institute
10 to have those employees exempted from the notification be-
11 cause they are not at risk of disease based on significant miti-
12 gating factors.

13 (2) If the Institute concludes that any such application
14 raises an issue of material fact which is subject to reasonable
15 dispute, it shall publish a notice so stating in the Federal
16 Register within 30 days after receiving the employer's de-
17 tailed application and shall schedule a hearing on the disput-
18 ed issues. All applications for exemption with respect to any
19 one population at risk shall be consolidated into a single hear-
20 ing and such hearing shall be concluded within 60 days fol-
21 lowing publication of such notice in the Federal Register.

22 (3) While an application for exemption is pending before
23 the Institute, the Secretary shall not proceed with the notifi-
24 cation requirements of the Board's determination with re-

1 spect to the affected employees of the employer or employers
2 seeking such exemption.

3 (4) Within 30 days after the conclusion of the hearing,
4 or, where no hearing was conducted, within 30 days of the
5 receipt of the application, the Institute shall grant an exemp-
6 tion from notification to any employer who has demonstrated
7 by a preponderance of the evidence that his employees should
8 not be included within the population at risk of disease and
9 shall deny such exemption to all other employers. In deter-
10 mining whether an exemption shall be granted, the Institute
11 shall take into account such mitigating factors as work prac-
12 tices, health and safety programs, engineering controls, or
13 other factors that are fundamentally different from those used
14 by the Board that substantially eliminate the risk of develop-
15 ing the occupational disease under examination.

16 (5) No employer who has not applied for an exemption
17 may benefit from a decision favorable to any other employer.

18 (6) Determinations of the Institute pursuant to this sub-
19 section shall not be subject to judicial review.

20 (d) CONTENTS OF NOTIFICATION.—(1) The notification
21 under subsection (b) shall include—

22 (A) an identification of the occupational health
23 hazard, including the name, composition, and proper-
24 ties of known chemical agents;

1 (B) the disease or diseases associated with expo-
2 sure to the occupational health hazard, and the fact
3 that such association pertains to classes or categories
4 of employees;

5 (C) any known latency periods from time of expo-
6 sure to time of clinical manifestation of the disease;

7 (D) counseling appropriate to the nature of the
8 risk including, but not limited to—

9 (i) the advisability of initiating a personal
10 medical monitoring program;

11 (ii) the most appropriate type of medical
12 monitoring or beneficial health counseling for the
13 disease associated with the risk;

14 (iii) the name and address of the nearest
15 health center certified under this Act;

16 (iv) the protections for notified employees, as
17 established under section 7 of this Act;

18 (v) employer responsibilities with respect to
19 medical monitoring for notified employees, as es-
20 tablished under section 7 of this Act; and

21 (vi) the telephone number of the hot line es-
22 tablished under subsection (e) of this section.

23 (2) If the notification transmitted under subsection (b)
24 concerns an occupational health hazard for which the hazard
25 communication standard requires the preparation and use of

1 any material safety data sheet, such notification shall include
 2 the material safety data sheet or a concise summary of the
 3 information contained in such data sheet, or both. Such sum-
 4 mary shall be written in a manner so as to be easily under-
 5 stood by the average employee.

6 (e) TELEPHONE INFORMATION.—The Institute shall
 7 establish a telephone “hot line” for the employees notified
 8 under this section and for their personal physicians for the
 9 purpose of providing additional medical, health, scientific in-
 10 formation concerning the nature of the risk and its associated
 11 disease.

12 (f) DISSEMINATION OF INFORMATION.—The Institute
 13 shall prepare and distribute other medical and health promo-
 14 tion materials and information on any risk subject to notifica-
 15 tion under this section and its associated disease as the Insti-
 16 tute deems appropriate.

17 (g) ACCESS TO INFORMATION.—In carrying out the no-
 18 tification responsibilities under this section, the ~~Secretary~~
 19 ~~shall~~, subject to the requirements of section 552a of title 5,
 20 United States Code, and other applicable provisions of Feder-
 21 al law, have access to information and data contained in the
 22 records of

23 (1) any Federal agency, or State or political sub-
 24 division of a State, solely for the purpose of obtaining

5(g) →

*of Human
& Health
Services
identify*

1 ~~names, addresses, and work histories of employees sub-~~
2 ~~ject to notification under this section,~~

3 (2) any employer insofar as Federal access is pro-
4 vided for under the Occupational Safety and Health
5 Act of 1970 or the Federal Mine Safety and Health
6 Act of 1977 or regulations promulgated pursuant
7 thereto; and

8 (3) any employer insofar as such information is
9 maintained by such employer under a State or Federal
10 law concerning occupational safety and health matters.

11 (h) COOPERATION WITH PRIVATE EMPLOYERS AND
12 STATE AND LOCAL GOVERNMENTS.—(1) In carrying out
13 the notification responsibilities under this section, the Secre-
14 tary shall cooperate with private employers and State and
15 local governments and, upon request, may certify a private
16 employer or a State or local government to transmit notifica-
17 tion under this section, pursuant to subsection (d) of this
18 section and in accordance with regulations issued by the
19 Secretary.

20 (2) No private employer or State or local government
21 certified under this paragraph may receive payment for the
22 cost of such notification from the United States, or have a
23 right of access to Federal records for the purposes of carrying
24 out the notification.

1 (i) LIABILITY.—The United States or any agency or
2 employee thereof, including any employer or government
3 acting pursuant to subsection (h) of this section, shall not be
4 subjected to suit or judicial or nonjudicial proceedings of any
5 kind that seek monetary damages with respect to or arising
6 out of any act or omission pursuant to this Act. This subsec-
7 tion shall not apply to—

8 (1) an employee of the United States for any act
9 or omission that is a knowing and willful violation of a
10 provision of this Act to the extent that Federal law
11 otherwise authorizes suit against that individual for
12 monetary damages; and

13 (2) an employer or State or local government
14 acting pursuant to subsection (g) of this section for any
15 act or omission that is a knowing or reckless violation
16 of a provision of this Act.

17 (j) JUDICIAL REVIEW.—(1) Any person adversely af-
18 fected or aggrieved by a determination by the Board under
19 this Act that a given class or category of employees is or is
20 not a population at risk of disease to be notified under the
21 Act is entitled to judicial review of that determination in the
22 appropriate United States Court of Appeals upon a petition
23 filed in such court by such person. Any petition filed pursuant
24 to this section shall be filed within 30 days after the adoption
25 of such determination by the Secretary.

1 (2) A copy of any petition filed under paragraph (1) shall
2 be promptly transmitted to the Secretary by the clerk of the
3 court. The Secretary shall file in the court, as provided in
4 section 2112 of title 28, United States Code, the record of
5 the proceedings of the Board on which the determination is
6 based.

7 (3) The determinations of the Board shall be subject to
8 review in accordance with section 706 of title 5, United
9 States Code.

10 (4) The commencement of proceedings under this sub-
11 section shall not operate as a stay of the action of the Secre-
12 tary to notify employees unless the court specifically orders a
13 stay based upon a determination by the court that the com-
14 plaining party is highly likely to succeed on the merits.

15 **SEC. 6. HEALTH CENTERS; RESEARCH, TRAINING, AND EDU-**
16 **CATION.**

17 **(a) HEALTH CENTERS.—**

18 (1) **ESTABLISHMENT OF CENTERS.—**(A) Within
19 90 days after the effective date of this Act, the Secre-
20 tary shall establish and certify 10 health centers. The
21 Secretary, in selecting the 10 health centers, shall
22 choose from among the education resource centers of
23 the Institute and similar facilities of the National Insti-
24 tute for Environmental Health Sciences, the National
25 Cancer Institute, and other private and governmental

1 organizations that apply for such designation by the
2 Secretary. The Secretary shall consider regional distri-
3 bution in selecting the 10 health centers. At a later
4 date, but not more than 5 years after the effective date
5 of this Act, the Secretary shall establish and certify ad-
6 ditional health centers from among the health care fa-
7 cilities described in this paragraph so as to obtain no
8 less than one center per State throughout the United
9 States.

10 (B) Such centers and personnel assigned to them
11 shall be selected on the basis of—

12 (i) their demonstrated ability and experience
13 in the recognition, diagnosis, and treatment of oc-
14 cupationally related diseases in an ethical manner,
15 and

16 (ii) their capability to offer training and as-
17 sistance to physicians and health and social serv-
18 ice professionals engaged in the management of
19 populations and individuals at risk of occupational
20 disease, and to fulfill other functions assigned to
21 them under this section.

22 (C) Such centers shall be certified under criteria
23 developed by the Secretary.

24 (2) FUNCTIONS OF CENTERS.—The centers
25 shall—

1 (A) provide education, training, and technical
2 assistance to personal physicians and health and
3 social service professionals who serve employees
4 notified under section 5 of this Act; and

5 (B) be capable, in the event that adequate fa-
6 cilities are not otherwise reasonably available, of
7 providing diagnosis, medical monitoring and
8 family services, and treatment for employees noti-
9 fied under section 5 of this Act.

10 (3) COST OF TRAINING AND EQUIPMENT.—The
11 Secretary shall, from funds appropriated under this
12 Act, reimburse the health centers certified under this
13 section for the cost of developing a training program
14 and procuring specialized equipment required under the
15 certification criteria developed pursuant to paragraph
16 (1) of this subsection.

17 (b) IMPROVED METHODS OF MONITORING AND IDENTI-
18 FICATION.—The Secretary shall, from amounts available
19 under section 10(b) of this Act, make grants to certified
20 health centers, schools of public health and other institutions,
21 and organizations that meet criteria established by the Secre-
22 tary to conduct research, training, and education aimed at
23 improving the means of assisting employees exposed to occu-
24 pational health hazards and the means of identifying worker
25 populations exposed to such hazards. Such research, training,

1 and education shall include (but not be limited to) the follow-
2 ing areas:

3 (1) studying the etiology and development of occu-
4 pationally related diseases and the disabilities resulting
5 from such diseases;

6 (2) developing means of medical monitoring of em-
7 ployees exposed to occupational health hazards;

8 (3) examining the types of medical treatment of
9 workers exposed to occupational health hazards and
10 means of medical intervention to prevent the deteriora-
11 tion of the health and functional capabilities of employ-
12 ees disabled by occupational disease;

13 (4) studying and developing medical treatment and
14 allied social services for employees exposed to occupa-
15 tional health hazards;

16 (5) developing education programs designed to
17 train physicians, health, and social services profession-
18 als to assist employees and their families in undertak-
19 ing measures which ameliorate the effects of those dis-
20 eases; and

21 (6) sponsoring epidemiological, clinical, and labo-
22 ratory research to identify and define additional em-
23 ployee populations at risk of disease from exposure to
24 an occupational health hazard.

25 (c) EDUCATION.—

1 (1) GRANTS TO INSTITUTIONS WITH EXISTING
2 PROGRAMS.—(A) The Secretary may make grants to,
3 and enter into contracts with, schools of medicine and
4 schools of nursing in which occupational medicine or
5 occupational health programs exist on the date of en-
6 actment of this section to assist such programs in
7 meeting the costs of providing projects—

8 (i) to provide continuing education for faculty
9 in departments of internal medicine and family
10 medicine or in schools of nursing in order to
11 enable such faculty to provide instruction in the
12 diagnosis and treatment of occupational diseases;

13 (ii) to develop, publish, and disseminate cur-
14 ricula and training materials concerning occupa-
15 tional medicine or health for use in undergraduate
16 medical or nursing training; or

17 (iii) to establish, for residents in graduate
18 medical education programs in internal medicine,
19 family medicine, and other specialties with a pri-
20 mary care focus, or in graduate nursing programs
21 in schools of nursing, training programs in occu-
22 pational medicine or health consisting of clinical
23 training, for periods of between 1 and 4 months,
24 in settings such as medical facilities, union offices,
25 and industrial worksites.

1 (B) In making grants and entering into contracts
2 under this paragraph, the Secretary shall give prefer-
3 ence to applicants which demonstrate—

4 (i) the ability to recruit a significant number
5 of participants to participate in the project to be
6 carried out under the grant or contract (in the
7 case of a project described in subparagraph (A) (i)
8 or (iii) of this paragraph); and

9 (ii) expertise and experience in the provision
10 of continuing education in occupational medicine
11 or health (in the case of a project described in
12 subparagraph (A)(i)) or the provision of residency
13 training in occupational medicine or health (in the
14 case of a project described in subparagraph
15 (A)(iii)).

16 (2) GRANTS TO SUPPORT NEW PROGRAMS.—(A)
17 The Secretary may make grants to, and enter into con-
18 tracts with, schools of medicine and schools of nursing
19 in which, on the date of enactment of this section,
20 there do not exist training programs in occupational
21 medicine or health. The purpose of grants and con-
22 tracts under this paragraph is to provide support for
23 projects to provide training in occupational medicine or
24 health for faculty who are certified in internal medicine
25 or family medicine by the appropriate national medical

1 specialty board or faculty who have similar qualifica-
2 tions in professional nursing.

3 (B) Each project for which a grant or contract is
4 made under this paragraph shall—

5 (i) be based in a graduate medical education
6 program in internal medicine or family medicine
7 or in graduate programs in a school of nursing;

8 (ii) have an arrangement with an accredited
9 training program in occupational medicine or
10 health for the provision of training in occupational
11 medicine or health to the faculty selected by the
12 recipient of the grant or contract under this sub-
13 section; and

14 (iii) have a plan for the use of the faculty re-
15 ceiving training with a grant or contract under
16 this section to provide education and training in
17 occupational medicine or health to other individ-
18 uals.

19 (3) MINIMUM NUMBER OF GRANTS.—The Secre-
20 tary shall, during the period October 1, 1987, through
21 September 30, 1990, make grants and contracts to not
22 less than 10 schools of medicine or schools of nursing
23 under paragraphs (1) and (2) of this subsection.

1 (4) **SOURCES OF FUNDS.**—Unexpended amounts
2 described in section 10(a) of this Act shall be available
3 to carry out this subsection.

4 (5) **DEFINITIONS.**—For the purpose of this sub-
5 section—

6 (A) the term “graduate medical education
7 program” has the same meaning as in section
8 788(e)(4)(A) of the Public Health Service Act; and

9 (B) the term “school of nursing” has the
10 same meaning as in section 853(2) of such Act.

11 **SEC. 7. EMPLOYEE MEDICAL MONITORING, DISCRIMINATION,**
12 **AND CONFIDENTIALITY.**

13 (a) **EMPLOYEE MEDICAL MONITORING.**—(1) Upon the
14 request of any employee notified under section 5(b) of this
15 Act, the testing, evaluation, and medical monitoring recom-
16 mended by the Board with respect to the occupational health
17 hazard shall be provided or made available by the current
18 employer—

19 (A) at no additional cost to the employee (above
20 any existing employee health care contribution) if any
21 part of such exposure occurred in the course of the em-
22 ployee’s employment by that employer; or

23 (B) at a charge to the employee not exceeding the
24 additional cost to the employer (above any existing em-
25 ployer health care contribution), or at no charge, if no

1 part of such exposure occurred in the course of the em-
2 ployee's employment by that employer.

3 (2) An employer shall not be required to duplicate any
4 medical monitoring already required under a permanent
5 health standard promulgated under section 6(b)(5) of the Oc-
6 cupational Safety and Health Act of 1970 (29 U.S.C.
7 665(b)(5)), or under section 101(d) of the Federal Mine Safety
8 Act of 1969 (30 U.S.C. 811(d)).

9 (b) DISCRIMINATION PROHIBITED.—

10 (1) no employer or other person shall discharge or
11 in any manner discriminate against any employee or
12 any applicant for employment on the basis that the em-
13 ployee or applicant is or has been a member of a popu-
14 lation that has been determined by the Board to be at
15 risk of disease. This subsection shall not prohibit an
16 employer from refusing to employ an applicant who is
17 or has been a member of a population at risk with re-
18 spect to an occupational health hazard in a position re-
19 quiring exposure to the same occupational health
20 hazard; and

21 (2) an employer with 50 or fewer employees may
22 transfer an employee who is or has been a member of
23 a population at risk to another job without violating
24 this subsection so long as the new job has earnings, se-
25 niority, and other employment rights and benefits as

1 comparable as practicable to the job from which the
2 employee has been removed. In providing such alterna-
3 tive job assignment, the employer shall not violate the
4 terms of any applicable collective bargaining agree-
5 ment.

6 (c) BENEFIT REDUCTION PROHIBITED.—

7 (1) If, based on a determination by the Board
8 under this Act, an initial medical determination is
9 made by the employee's physician that an employee
10 who is a member of a population at risk shows evi-
11 dence of the development of the diseases described in
12 the notification, or other objective symptoms and condi-
13 tions increasing the likelihood of the manifestation of
14 such disease, that employee shall have the option of
15 being transferred to a less hazardous or nonexposed
16 job. If within 10 working days after the employee has
17 exercised such transfer option and transmitted to the
18 employer that determination, the employer's medical
19 representative has not requested independent reconsid-
20 eration of the employee's transfer determination, the
21 employee shall be removed to a less hazardous or non-
22 exposed job and shall maintain the earnings, seniority,
23 and other employment rights and benefits as though
24 the employee had not been removed from the former
25 job.

1 (2) If the employer's medical representative re-
2 quests independent reconsideration of the initial deter-
3 mination, the employee's medical representative shall,
4 within 14 working days of the transmittal of the trans-
5 fer determination, submit the matter to another mutu-
6 ally acceptable, qualified independent physician for a
7 final medical determination. Such final determination
8 shall be made within 21 working days of the transmit-
9 tal of the transfer determination, unless a longer period
10 is agreed to by the parties. If the two medical repre-
11 sentatives have been unable to agree upon the third
12 physician, the Secretary or the Secretary's local desig-
13 nee for such purpose shall immediately, at the request
14 of the employee or the employee's physician, appoint a
15 qualified independent physician who shall make the
16 final medical determination within such 21-working-day
17 period (or within such longer period as is agreed to by
18 the parties). The employer shall bear all costs related
19 to the procedure required by this paragraph.

20 (3) The medical removal protection described in
21 this subsection shall be provided for as long as a less
22 hazardous or nonexposed job is available. The avail-
23 ability of such a job shall depend on the employee's
24 skills, qualifications, and aptitudes, and the job's re-
25 quirements. Where such a job is not available, medical

1 removal protection shall be provided for a period not to
2 exceed 12 months. The employer may condition the
3 provision of medical removal protection upon the em-
4 ployee's participation in followup medical monitoring
5 for the occupational health effects in question, based on
6 the procedure required by this subsection. The employ-
7 er's obligation to provide medical removal protection
8 benefits shall be reduced to the extent that the employ-
9 ee receives workman's compensation, disability com-
10 pensation, or other compensation for earnings lost
11 during the period of removal, or receives income from
12 employment with another employer made possible by
13 virtue of the employee's removal.

14 (4) Provisions for medical removal protection
15 under this subsection shall not apply if—

16 (A) a medical removal protection procedure
17 already exists under a standard promulgated
18 under the Occupational Safety and Health Act of
19 1970 or the Federal Mine Safety and Health Act
20 of 1977 for the occupational health hazard for
21 which the employee has been or is being notified;
22 or

23 (B) in providing such alternative job assign-
24 ment, the employer is required to violate the
25 terms of any applicable collective bargaining

1 agreement, or is required to displace, lay off, or
2 terminate any other employee.

3 (5) Provisions for medical removal protection
4 under this subsection shall not apply to any seasonal
5 agricultural worker employed by an employer for less
6 than 6 months of continuous employment.

7 (6) An employer is not required to provide medi-
8 cal removal protection for employees if the employer—

9 (A) has 50 or fewer full-time employees at
10 the time medical removal protection is requested,
11 and

12 (B) has made or is in the process of making
13 a reasonable good faith effort to eliminate the oc-
14 cupational health hazard that is the basis for the
15 medical removal decision.

16 (d) CONFIDENTIALITY.—Any records of the identity, di-
17 agnosis, prognosis, or treatment of an individual employee
18 which are maintained in connection with the performance of
19 any function authorized by this Act shall be confidential and
20 may be disclosed only—

21 (1) if necessary to perform any function authorized
22 by this Act, including the performance of medical mon-
23 itoring; or

1 (2) with the written consent of such individual
2 employee or the employee's personally designated
3 representative.

4 (e) REVIEW OF COMPLAINTS.—(1) Any employee who
5 is aggrieved by a violation of this section, may, within 6
6 months after such violation occurs, apply to the Secretary of
7 Labor for a review of such alleged violation. Upon receipt of
8 such application, the Secretary of Labor shall cause an inves-
9 tigation to be made as he deems appropriate. If upon such
10 investigation the Secretary of Labor determines that the pro-
11 visions of this section have been violated, he shall bring an
12 action in any appropriate United States district court. In any
13 such action, the United States district courts shall have juris-
14 diction for cause shown to restrain violations of this section
15 and to order all appropriate relief under this section.

16 (2) Within 90 days of the receipt of the application filed
17 under this subsection, the Secretary of Labor shall notify the
18 complainant of his determination under paragraph (1) of this
19 subsection. If the Secretary of Labor finds that there was no
20 such violation, he shall issue an order denying the
21 application.

22 (f) REINSTATEMENT AND OTHER RELIEF.—Any em-
23 ployee who is discriminated against in violation of this section
24 shall be restored to his or her employment and shall be com-
25 pensated for—

1 (1) any lost wages (including fringe benefits and
2 seniority);

3 (2) costs associated with medical monitoring that
4 are incurred while the violation continues; and

5 (3) costs associated with bringing the allegation of
6 violation.

7 (g) CIVIL PENALTIES.—Any person or institution that
8 violates this section shall be liable for a civil penalty of not
9 less than \$1,000 or more than \$10,000 for each violation as
10 may be determined by the Secretary of Labor.

11 SEC. 8. ENFORCEMENT AUTHORITY.

12 (a) INJUNCTIVE RELIEF.—Whenever the Secretary de-
13 termines that any person or institution has engaged, is en-
14 gaged, or is about to engage in an act or practice constituting
15 a violation of this Act or any rule or regulation promulgated
16 under this Act, the Secretary may bring an action in the
17 proper United States district court to enjoin such acts or
18 practices, and upon a proper showing an injunction or perma-
19 nent or temporary restraining order shall be granted without
20 bond. The provisions of section 5(i) shall not limit the author-
21 ity of the Secretary under this subsection.

22 (b) EFFECT ON OTHER LAWS AND PROHIBITION ON
23 THE USE OF BOARD DETERMINATIONS.—(1) In connection
24 with any claim for compensation, loss, or damage brought
25 under State or Federal law, the following may not serve as a

1 legal basis for or be introduced as evidence in connection
2 with such claim:

3 (A) a finding or determination of the Board, or an
4 action by the Secretary based on such finding or deter-
5 mination, that an employee is or is not a member of, or
6 that an employee population is or is not, a population
7 at risk of disease as determined under this Act;

8 (B) evidence that an employee or employee popu-
9 lation is or is not about to receive (or has or has not
10 received) notification under this Act; and

11 (C) evidence that medical monitoring or evalua-
12 tion is or is not to be initiated (or has or has not been
13 initiated) under this Act.

14 (2) With respect to any claim for compensation, loss, or
15 damage under State or Federal law, nothing in this Act shall
16 preclude the admission into evidence of—

17 (A) the results of any medical monitoring or
18 evaluation;

19 (B) any medical and other scientific studies and
20 reports concerning the incidence of disease associated
21 with exposure to occupational health hazards; or

22 (C) any data related to exposure to occupational
23 health hazards for individual employees.

1 (3) Notification pursuant to this Act shall not be rele-
2 vant in determining whether such a claim is timely under any
3 applicable statute of limitations.

4 **SEC. 9. REPORTS TO CONGRESS.**

5 **(a) HAZARD COMMUNICATION STANDARD REPORT.—**

6 The Secretary of Labor shall report to the Congress annual-
7 ly, not later than January 15 of each year, regarding imple-
8 mentation and enforcement of the hazard communication
9 standard. The report shall include detailed information on—

10 (1) monitoring and enforcement of noncompliance,
11 significant areas of noncompliance, penalties assessed,
12 and steps taken to correct noncompliance;

13 (2) evaluation of the effectiveness of the standard,
14 the material safety data sheets, and training and edu-
15 cation programs for employees; and

16 (3) efforts to assist employers in complying with
17 the standard.

18 **(b) OCCUPATIONAL DISEASE NOTIFICATION**

19 **REPORT.—**The Secretary shall report to the Congress annu-
20 ally, not later than January 15 of each year, regarding the
21 implementation and enforcement of notification under this
22 Act. The report shall include detailed information on—

23 (1) numbers, types, and results of notifications
24 carried out pursuant to this Act; and

1 (2) research efforts carried out pursuant to this
2 Act.

3 SEC. 10. AUTHORIZATIONS.

4 (a) There are authorized to be appropriated
5 \$25,000,000 for each of the fiscal years 1988, 1989, 1990,
6 1991, and 1992 to carry out the provisions of this Act.

(b) Of the total amount appropriated under subsection (a) for each fiscal year, at least \$4,000,000 shall be available to carry out activities under section 6(b) of this Act.

10 SEC. 11. EFFECTIVE DATE.

11 Except as may be otherwise provided therein, the provi-
12 sions of this Act shall become effective January 1, 1988, or 6
13 months after the date of enactment of this Act, whichever
14 occurs first, except that—

15 (1) the Board shall be appointed within 60 days
16 after the date of enactment of this Act; and

17 (2) the Secretary shall issue regulations necessary
18 to administer this Act within 120 days after the date of
19 enactment of this Act.

Passed the House of Representatives October 15,
1987.

Attest: DONNALD K. ANDERSON,
Clerk.

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DATE 08 FEB 1988

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STAT^U Office of Security

ROOM NO.

BUILDING

STAT 6S17

Building

REMARKS:

Per our telecon of today.

STAT FROM [redacted] /OCA/Leg

ROOM NO.

BUILDING

EXTENSION

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Release 2013/01/17 : [redacted]

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IX

Calendar No. 382

100TH CONGRESS
1ST SESSION

H. R. 162

IN THE SENATE OF THE UNITED STATES

OCTOBER 20 (legislative day, OCTOBER 16), 1987

Received; read twice and placed on the calendar

AN ACT

To establish a system for identifying, notifying, and preventing illness and death among workers who are at increased or high risk of occupational disease, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "High Risk Occupational
5 Disease Notification and Prevention Act of 1987".

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) **FINDINGS.**—The Congress finds that—

8 (1) potentially hazardous substances, agents, and
9 processes are in wide industrial and commercial use in
10 the United States;